

THE LAW OFFICES OF

STEVEN L. KESSLER

August 8, 2021

Honorable Katherine Polk Failla
United States District Judge
Southern District of New York
40 Foley Square, Courtroom 618
New York, New York 10007

**Re: *Forfeiture proceeding ancillary to
United States v. Ilya Kogan
S2 16 Cr. 221 (KPF)***

Dear Judge Failla:

As counsel for Petitioner Irina Kogan in the referenced ancillary forfeiture proceeding, we respectfully submit this letter as an update for the Court. As Your Honor is aware, on February 16, 2021, the government responded to Ms. Kogan's Petition by moving for a judgment on the pleadings. That motion is currently pending before this Court.

This past Thursday, Judge Koeltl filed a Memorandum Opinion and Order in *United States v. Joseph Stern*, 16-cr-525 (JGK), an ancillary proceeding involving the rights of an innocent spouse to property held as a tenancy by the entirety with the defendant. As in the matter before Your Honor, the preliminary order of forfeiture forfeited the defendant's right, title and interest in the property as a substitute asset. Judge Koeltl denied the government's motion to dismiss the petition and upheld the validity of Mrs. Stern's interest in the property.

In *Stern*, the government's arguments in support of its motion were identical to those it made here. Judge Koeltl rejected the government's reliance on the 'forfeiture as a divorce' analogy in *United States v. Totaro*, 345 F.3d 989 (8th Cir. 2003), and held that "[t]he government cannot take, and Mr. Stern cannot forfeit, an interest that does not belong to Mr. Stern." Op. at 12. The court therefore directed the government to "submit a proposed Amended Order of Forfeiture" eliminating the property from the forfeiture order and closing the ancillary proceeding.

Respectfully submitted,

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